

HOUSE BILL No. 1096

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2-365; IC 16-34-2; IC 35-42-1-6.

Synopsis: Limitation on abortions. Provides that human life begins when a human ovum is fertilized by a human sperm. Makes performing any abortion that is not necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman a Class C felony. Makes conforming amendments and a technical correction.

Effective: July 1, 2006.

Woodruff

January 5, 2006, read first time and referred to Committee on Public Policy and Veterans Affairs.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

HOUSE BILL No. 1096

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-365 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 365. "Viability" or
3 "viable", for purposes of IC 16-34, means the ability of a fetus to live
4 outside the mother's womb.

5 SECTION 2. IC 16-34-2-0.5 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2006]: **Sec. 0.5. Human life begins when a human ovum is**
8 **fertilized by a human sperm.**

9 SECTION 3. IC 16-34-2-1 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) ~~Abortion shall in~~
11 ~~all instances be~~ **A person who knowingly or intentionally performs**
12 **an abortion commits** a criminal act, ~~except when~~ **unless the abortion**
13 **is performed under all of the following circumstances: conditions:**

14 (1) ~~During the first trimester of pregnancy for reasons based upon~~
15 ~~the professional, medical judgment of the pregnant woman's~~
16 ~~physician if:~~

17 (A) the abortion is performed by the physician;



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(B) the woman submitting to the abortion has filed her consent with her physician. However, if in the judgment of the physician the abortion is necessary to preserve the life of the woman, her consent is not required; and

(C) the woman submitting to the abortion has filed with her physician the written consent of her parent or legal guardian if required under section 4 of this chapter.

(2) After the first trimester of pregnancy and before viability, for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion during the first trimester are present and adhered to; and

(B) the abortion is performed in a hospital or ambulatory outpatient surgical center (as defined in IC 16-18-2-14);

(3) Except as provided in subsection (b), after viability of the fetus for reasons based upon the professional, medical judgment of the pregnant woman's physician if:

(A) all the circumstances and provisions required for legal abortion before viability are present and adhered to;

(B) the abortion is performed in compliance with section 3 of this chapter; and

(C) before the abortion the attending physician shall certify in writing to the hospital in which the abortion is to be performed; that in the attending physician's professional, medical judgment; after proper examination and review of the woman's history, the abortion is necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman. All facts and reasons supporting the certification shall be set forth by the physician in writing and attached to the certificate.

(1) The abortion is necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman.

(2) The abortion is performed by a physician.

(3) The woman upon whom the abortion is performed has submitted written consent to her physician, unless exigent circumstances preclude the filing of a written consent.

(4) The abortion is performed:

(A) in a hospital or an ambulatory outpatient surgical center after the first trimester of pregnancy; or

(B) in accordance with section 3 of this chapter.

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(5) If the woman is less than eighteen (18) years of age, in addition to the written consent required under subdivision (3), the woman has submitted to her physician the written consent of her parent or guardian if required under section 4 of this chapter.

(6) The attending physician certifies in writing to the hospital or ambulatory outpatient surgical center in which the abortion is to be performed that in the professional medical judgment of the attending physician, after proper examination and review of the woman's medical history, the abortion is necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman. The attending physician shall set forth in writing all facts and reasons supporting the certification and attach this written statement to the certificate.

(b) A person may not knowingly or intentionally perform a partial birth abortion unless a physician reasonably believes that:

(1) performing the partial birth abortion is necessary to save the mother's life; and

(2) no other medical procedure is sufficient to save the mother's life.

SECTION 4. IC 16-34-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) All abortions performed after a fetus is viable shall be:

(1) governed by ~~section 1(a)(3) and 1(b) of this chapter;~~ **section 1 of this chapter;**

(2) performed in a hospital having premature birth intensive care units, unless compliance with this requirement would result in an increased risk to the life or health of the mother; and

(3) performed in the presence of a second physician as provided in subsection (b).

(b) An abortion may be performed after a fetus is viable only if there is in attendance a physician, other than the physician performing the abortion, who shall take control of and provide immediate care for a child born alive as a result of the abortion. During the performance of the abortion, the physician performing the abortion, and after the abortion, the physician required by this subsection to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable unborn child. However, this subsection does not apply if compliance would result in an increased risk to the life or health of the mother.

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(c) Any fetus born alive shall be treated as a person under the law, and a birth certificate shall be issued certifying the child's birth even though the child may subsequently die, in which event a death certificate shall be issued. Failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the responsible persons to Indiana laws governing homicide, manslaughter, and civil liability for wrongful death and medical malpractice.

(d) If, before the abortion, the mother, and if married, her husband, has or have stated in writing that she does or they do not wish to keep the child in the event that the abortion results in a live birth, and this writing is not retracted before the abortion, the child, if born alive, shall immediately upon birth become a ward of the county office of family and children.

SECTION 5. IC 16-34-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) Every medical facility where abortions may be performed shall be supplied with forms drafted by the state department, the purpose and function of which shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in Indiana to assure the abortions are done only under the authorized provisions of the law. ~~Such~~ **The** forms shall include ~~among other things,~~ the following:

- (1) The age of the woman ~~who is aborted;~~ **upon whom the abortion was performed.**
- (2) The place where the abortion is performed.
- (3) The full name and address of the physicians performing the abortion.
- (4) The name of the father if known.
- (5) ~~If after viability;~~ The medical reason for the abortion.
- (6) The medical procedure employed to administer the abortion.
- (7) The mother's obstetrical history, including dates of other abortions, if any.
- (8) The results of pathological examinations if performed.
- (9) Information as to whether the fetus was delivered alive.
- (10) Records of all maternal deaths occurring within the health facility where the abortion was performed.

(b) The form provided for in subsection (a) shall be completed by the physician performing the abortion and shall be transmitted to the state department not later than July 30 for each abortion performed in the first six (6) months of that year and not later than January 30 for

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each abortion performed for the last six (6) months of the preceding year. Each failure to file the form on time as required is a Class B misdemeanor.

SECTION 6. IC 16-34-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. (a) Except as provided in subsections (b) and (c), a person who knowingly or intentionally performs an abortion **in a manner** not expressly ~~provided~~ **for permitted** in this chapter commits a Class C felony.

(b) A physician who **knowingly or intentionally** performs an abortion ~~intentionally or knowingly~~ in violation of section ~~1(a)(1)(C)~~ **1(a)(5)** or 4 of this chapter commits a Class A misdemeanor.

(c) A person who **knowingly or intentionally** performs an abortion in violation of section 1.1 of this chapter commits a Class A infraction.

(d) A woman upon whom a partial birth abortion is performed may not be prosecuted for violating or conspiring to violate section 1(b) of this chapter.

SECTION 7. IC 35-42-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. A person who knowingly or intentionally terminates a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus commits feticide, a Class C felony. This section does not apply to an abortion performed in compliance with

(1) IC 16-34, or

(2) IC 35-1-58.5 (before its repeal);

IC 16-34-2.

SECTION 8. [EFFECTIVE JULY 1, 2006] **IC 16-34-2-7 and IC 35-42-1-6, both as amended by this act, apply only to crimes committed after June 30, 2006.**

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